

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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JOHN TURNER.

Case No. 2:17-cv-01084-RFB-VCF

**Petitioner,**

## ORDER

v.

NEVADA DEPARTMENT OF  
CORRECTIONS, et al.,

## Respondents.

Petitioner John Turner has submitted a *pro se* habeas corpus petition (ECF No. 1-1). His application to proceed *in forma pauperis* (ECF No. 1) shall be granted. The petition shall be dismissed without prejudice because Turner's state-court proceedings are ongoing, and he has not exhausted his claims.

19       A federal court will not grant a state prisoner's petition for habeas relief until the  
20 prisoner has exhausted his available state remedies for all claims raised. *Rose v. Lundy*,  
21 455 U.S. 509 (1982); 28 U.S.C. § 2254(b). A petitioner must give the state courts a fair  
22 opportunity to act on each of his claims before he presents those claims in a federal  
23 habeas petition. *O'Sullivan v. Boerckel*, 526 U.S. 838, 844 (1999); see also *Duncan v.*  
24 *Henry*, 513 U.S. 364, 365 (1995). A claim remains unexhausted until the petitioner has  
25 given the highest available state court the opportunity to consider the claim through direct  
26 appeal or state collateral review proceedings. See *Casey v. Moore*, 386 F.3d 896, 916  
27 (9th Cir. 2004); *Garrison v. McCarthey*, 653 F.2d 374, 376 (9th Cir. 1981).

1        Here, petitioner has attached documents from his state postconviction  
2 proceedings. The court may also take notice of the dockets of the Nevada Supreme  
3 Court and the Nevada Court of Appeals. Taken together, they reflect that Turner's appeal  
4 of the denial of his state postconviction petition is pending before the Nevada Court of  
5 Appeals (see ECF No. 1-1, p. 32, 37; Nevada Court of Appeals Case No. 72602). The  
6 resolution of Turner's state postconviction petition could render a federal habeas petition  
7 moot. Accordingly, this federal petition shall be dismissed without prejudice to petitioner  
8 filing a new federal habeas petition, in a new case with a new case number and a new,  
9 completed application to proceed *in forma pauperis* with the required financial  
10 information.

11        **IT IS THEREFORE ORDERED** that petitioner's application for leave to proceed  
12 *in forma pauperis* (ECF No. 1) is **GRANTED**.

13        **IT IS FURTHER ORDERED** that the Clerk **shall file and ELECTRONICALLY**  
14 **SERVE** the petition (ECF No. 1-1) on the respondents, for informational purposes only.

15        **IT IS FURTHER ORDERED** that the Clerk shall add Adam Paul Laxalt, Nevada  
16 Attorney General, as counsel for respondents.

17        **IT IS FURTHER ORDERED** that this action is **DISMISSED** without prejudice as  
18 set forth in this order.

19        **IT IS FURTHER ORDERED** that petitioner's motion for appointment of counsel  
20 (ECF No. 4), motion for court order (ECF No. 5), motion for appointment of counsel  
21 (ECF No. 6), motion for evidentiary hearing (ECF No. 7), and motion for relief (ECF No.  
22 8) are **DENIED** as moot.

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1           **IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED**.  
2           **IT IS FURTHER ORDERED** that the Clerk shall enter judgment accordingly and  
3 close this case.

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5           DATED: 19 December 2017.  
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RICHARD F. BOULWARE, II  
UNITED STATES DISTRICT JUDGE